

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT E. JOHNSON,

Plaintiff,

V.

SARA DI VITTORIO et al..

## Defendants.

CASE NO. 3:12-cv-06018-RJB

ORDER AFFIRMING REPORT AND  
RECOMMENDATION AND  
DISMISSING CASE

This matter comes before the court on the Report and Recommendation of the Magistrate

Judge. Dkt. 40. The court has reviewed the relevant records and the remainder of the file herein.

Plaintiff Robert Earle Johnson alleges that two state judges and two assistant attorney

generals acted improperly in prior court proceedings. On November 4, 2013, Magistrate Judge J.

Richard Creatura issued a Report and Recommendation, concluding that Defendants' Motion for

Summary Judgment (Dkt. 20) should be granted, Plaintiff's cross motion for summary judgment

(Dkt. 36) should be denied, and this action should be dismissed. Dkt. 40.

On November 20, 2013, Johnson filed Objections to the Magistrate's Report and

Recommendation, advancing many of the same arguments found in his prior pleadings. Dkt. 44.

ORDER AFFIRMING REPORT AND  
RECOMMENDATION AND DISMISSING CASE-

1 On November 26, 2013, the Defendants filed Defendant's Response to Plaintiff's  
2 Objections to the Magistrate's Report and Recommendation. Dkt. 45. The Defendants argue that  
3 Johnson "makes many of the same arguments" and that "Defendants have thoroughly addressed  
4 these arguments." Dkt. 45, at 2. In addition, the Defendants note that the Magistrate Judge  
5 concluded that Johnson's action is not frivolous. Dkt. 45, at 2-3. The Defendants ask the Court to  
6 make its own determination of whether the action is frivolous. *Id.*

7 The court has reviewed the record *de novo* and concludes that the Magistrate Judge  
8 carefully and accurately reviewed the record and thoroughly addressed Plaintiff's claims. The  
9 court concurs with the analysis and conclusions of the Magistrate Judge. Despite Johnson's  
10 objections, Judges Hicks and Penoyar are immune from suit for the reasons provided in the  
11 Report and Recommendation. Judge Penoyer's ruling was not beyond the powers of the court. In  
12 addition, the *Rooker-Feldman* doctrine precludes this court from hearing Johnson's claims  
13 against Di Vittorio. Finally, Johnson's objections regarding his claims against Stanhope are  
14 meritless. Johnson has previously litigated allegations of fraud against Stanhope. *See Johnson v.*  
15 *Clark et al.*, Case No. 3:05-cv-05401, Dkt. 101, 106 (W.D. Wash. 2009). The Magistrate Judge  
16 validly found that Johnson's claims against Stanhope are time barred.

17 As the Magistrate Judge concluded, the court does not address the merits of Johnson's  
18 claims having recommended granting Defendants' Motion for Summary Judgment on all claims  
19 based on immunity, lack of subject matter jurisdiction, and the running of the statute of  
20 limitations. Further, the Court concurs with the Magistrate Judges' decision recommending that  
21 this action not be deemed frivolous. The Report and Recommendation should be adopted.

1 Therefore, it is hereby

2 **ORDERED** that the Report and Recommendation of the Magistrate Judge (Dkt. 40) is

3 **ADOPTED**. Defendants' Motion for Summary Judgment (Dkt. 20) is **GRANTED** and

4 Plaintiff's Cross-Motion for Summary Judgment (Dkt. 36) is **DENIED**. This case is dismissed.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
6 to any party appearing *pro se* at said party's last known address.

7 Dated this 11<sup>th</sup> day of December, 2013.

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10 ROBERT J. BRYAN  
United States District Judge

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